Supreme Court, U.S.
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No. 96-1388

In The

Supreme Court of the United States

October Term, 1996

I. PARKER HUFF,

Petitioner,

vs.

FIRST NATIONAL BANK OF CENTRE HALL,
Now Known as:
NORTHWEST SAVINGS BANK,

Respondent.

On Petition for a Writ of Certiorari to the Superior Court of Pennsylvania

RESPONDENT'S BRIEF IN OPPOSITION

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Dated: April 2, 1997

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QUESTION PRESENTED

None of the questions as stated by petitioner is presented in this case. Because the Petition is premised upon dissatisfaction with determinations of fact, and with the application of Pennsylvania law to those facts, the question presented might more accurately and simply be stated:

1. Where the bankruptcy court issued orders which authorized the Bank to proceed with foreclosure and execution proceedings against petitioner's mortgaged property in the Court of Common Pleas of Centre County, Pennsylvania, are the state court proceedings reviewable on writ of certiorari where petitioner failed to raise or preserve any issues of federal law in the state or federal courts below?

STATEMENT PURSUANT TO RULE 29.6

In 1996, all of the outstanding stock in the respondent, The First National Bank of Centre Hall was acquired by Northwest Savings Bank. Northwest Savings Bank has two wholly-owned corporate subsidiaries, as follows: Northwest Mortgage Corporation; and Northwest Consumer Discount Company.

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This case turns entirely upon questions of Pennsylvania law pertaining to execution against real estate pledged as security for a loan. Both the state trial court and the Superior Court of Pennsylvania reviewed petitioner's objections to the execution proceedings, and affirmed the validity of the execution sale. Because this case raises no important or novel questions of federal law, the case does not warrant review by this Court.

None of the considerations governing review on certiorari set forth in Supreme Court Rule 10 are present in this case. The decision below is not in conflict with the decision of another court of appeals on the same matter, or in conflict with applicable decisions of this Court. Nor did the Superior Court of Pennsylvania decide any important question of federal law in a way that conflicts with a decision by a state court of last resort. Finally, the courts below did not decide any important question of federal law "that has not been, but should be, settled by this Court."

STATEMENT OF JURISDICTION

The judgment of the Superior Court of Pennsylvania was entered on December 21, 1995. (A. 1a).[1] Petitioner's request for reargument in that court was denied on March 1, 1996. (A. 10a). The petition for allowance of appeal to the Supreme Court of Pennsylvania was denied without opinion on August 27, 1996. (A. 11a). Although petitioner seeks to invoke the jurisdiction of this Court under 28 U.S.C. § 1257(a), petitioner failed to raise

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1. To the extent that petitioner has included relevant opinions and orders in his Appendix, reference will be made thereto. Because petitioner has not included in his Appendix the orders and opinions issued by the bankruptcy court and the United States District Court for the Middle District of Pennsylvania, reference will be made to the Supplemental Reproduced Record, *e.g.*, (S.R. 1b) filed by respondent in the Superior Court of Pennsylvania.

below any issues pertaining to the validity of any statute of the United States, or any contention that any Pennsylvania statute was repugnant to the Constitution, treaties, or laws of the United States. To the extent that the orders of the bankruptcy court (S.R. 117b, 143b and 149b) or the district court (S.R. 126b, 127b, 150b and 153b) involved any federal questions, petitioner failed to appeal those determinations. Respondent urges that petitioner has not properly invoked the certiorari jurisdiction of this Court.

STATUTE INVOLVED

Petitioner never raised or litigated below any issues arising under the United States Constitution. Respondent urges that there are no constitutional provisions involved. Because the petitioner never exhausted his appeals of the bankruptcy court's orders lifting the automatic stay to permit the pursuit of state court foreclosure and execution proceedings against the mortgaged property, the state courts did not consider or decide any questions arising under the federal bankruptcy laws. Accordingly, the following statute is involved:

28 U.S.C. § 1257(a):

> (a) Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties

or statutes of, or any commission held or authority exercised under, the United States.

STATEMENT OF THE CASE

Petitioner, I. Parker Huff ("Huff") borrowed $150,000 from respondent The First National Bank of Centre Hall ("Centre Hall Bank" or the "Bank") on November 21, 1985. To secure that loan, Huff provided the Bank with a first mortgage on real estate, purchased with the loan proceeds. Between September, 1989 and May 24, 1994, Huff made no payments toward that loan, but succeeded in living on the property for free, by availing himself of two (2) separate bankruptcy filings, as well as various collateral federal and state court proceedings attendant thereto. Huff's luck ran out when the mortgaged property was sold by the Sheriff of Centre County, Pennsylvania, on May 24, 1994.

A. The Loan

This saga began, ironically enough, with petitioner's purchase of the mortgaged real estate at an execution sale conducted by the Sheriff of Centre County, Pennsylvania. Huff sought financing for the acquired property from The First National Bank of Centre Hall, and provided a first mortgage to the Bank on the real estate thus acquired.

From the inception of the loan, Huff was unable to make the monthly payments. The Centre Hall Bank began foreclosure proceedings on numerous occasions between March, 1986 and October, 1989. Huff was able to avoid execution by making belated payments. Prior to the execution sale here at issue, the Bank last received funds for application toward Huff's loan in September, 1989.

B. The First Bankruptcy

In order to avoid an execution sale of his real estate scheduled to take place on June 5, 1990, Huff filed a petition seeking protection of the bankruptcy court under Chapter 11, on June 4, 1990. Huff sought to reorganize his affairs by using the bankruptcy to facilitate a subdivision of the farm property on which the Bank held the first mortgage. After two years of bankruptcy protection, however, it became apparent that Huff had neither the means, nor the ability, the effectuate a subdivision of that farm property. It was also clear that Huff did not have the ability to make payments toward the Bank's loan in the absence of any subdivision scheme. Accordingly, an order was issued on October 8, 1992, by the United States Bankruptcy Court for the Middle District of Pennsylvania, converting Huff's Chapter 11 case to a Chapter 7 liquidation. (S.R. 107b). Along with the order, the bankruptcy judge issued a memorandum detailing the reasons for the conversion. (S.R. 101b). By October of 1992, Huff's secured debt to the Bank had grown from the original amount of $150,000 to more than $182,000.

Huff continued to assert his right to a Chapter 11 proceeding, and litigated that issue in the bankruptcy court for nearly two more years. On June 18, 1993, the bankruptcy court rejected all of Huff's arguments, and issued an order which lifted the automatic stay with respect to real property on which the Bank possessed the first mortgage lien. This order permitted the Centre Hall Bank to proceed with its collection remedies under state law, as follows:

ORDER

AND NOW, this 18th day of June, 1993,

* * *

> Upon consideration of the motion of the First National Bank of Centre Hall for relief from the automatic stay, for the reasons stated in the accompanying Memorandum, it is hereby ordered that the relief from the stay requested in said motion is GRANTED, and the automatic stay is hereby LIFTED with respect to real property of the estate in which the Bank possesses a perfected security interest.
>
> BY THE COURT:
>
> Robert J. Woodside
> Chief Bankruptcy Judge
>
> HARRISBURG, PENNSYLVANIA

(S.R. 117b).

At about the same time, by date of June 24, 1993, the bankruptcy court issued a discharge to Huff. (S.R. 118b). As found by the bankruptcy court, Huff's three years of bankruptcy protection had caused the amount owed to the Bank to balloon to more than $228,000, as of June 1, 1993. (S.R. 111b).

Huff appealed the foregoing decision of the bankruptcy court to the United States District Court for the Middle District of Pennsylvania, and also sought supersedeas while that appeal was pending. The supersedeas was denied by memorandum and order issued by The Honorable James F. McClure, Jr., on February 16, 1994. (S.R. 119b-126b). District Judge McClure subsequently affirmed the rulings of Bankruptcy Judge Woodside, by order issued on May 6, 1994. (S.R. 127b). Huff did not appeal to the United States Court of Appeals for the Third Circuit.

C. The Collection

When the Centre Hall Bank finally obtained the right to proceed with state court collection remedies following Huff's three years in bankruptcy, the Bank moved to amend its judgment in the state trial court to reflect the current amount then owed. After considering Huff's opposition thereto, the state trial court entered an order amending the judgment. (A. 23a).

In response to Huff's petition to strike off amended judgment, the trial court entered an order on November 5, 1993, denying that petition. (A. 19a). In its opinion, the state trial court recognized that the Bank's pursuit of state law remedies against the mortgaged real estate was specifically authorized by the bankruptcy court's June 18, 1993, order. (A. 21a).

Following denial of Huff's motion for stay pending appeal before the United States District Court for the Middle District of Pennsylvania (S.R. 126b), the Bank obtained a writ of execution in the state trial court to facilitate sale of the mortgaged real estate.

D. The Second Bankruptcy

In order to avert the execution sale scheduled for May 24, 1994, Huff filed a second Chapter 11 bankruptcy petition on April 22, 1994. The Bank immediately moved for an order to dismiss that bankruptcy, or to lift the automatic stay, urging that the bankruptcy filing was undertaken in bad faith in order to avoid an execution sale previously sanctioned by the bankruptcy court's June 18, 1993, order. (S.R. 133b). The United States Trustee filed a similar motion on or about May 2, 1994. (S.R. 140b). Following a telephone hearing with the parties, the bankruptcy judge granted the Bank's motion with the following order:

* * *

For the foregoing reasons, it is hereby ORDERED that the relief requested in the Bank's motion for relief from the automatic stay is hereby GRANTED, and the Sheriff's Sale of the Property set for May 24, 1994, shall proceed as scheduled.

BY THE COURT:

Robert J. Woodside
Chief Bankruptcy Judge

HARRISBURG, PENNSYLVANIA
DATED: MAY 19, 1994

(S.R. 143b-148b).

Huff's motion for emergency reconsideration of the bankruptcy court's order lifting the automatic stay, was denied. (S.R. 149b). Huff subsequently sought reconsideration before the United States District Court for the Middle District of Pennsylvania, which was denied by order of May 24, 1994. (S.R. 150b-152b). Huff's appeal of the bankruptcy court's order permitting the state court execution sale to proceed was subsequently denied by order of the district court on June 16, 1994. (S.R. 153b). Huff never perfected any appeal of that order to the United States Court of Appeals for the Third Circuit.

E. The Execution Sale

On May 24, 1994, the execution sale of Huff's mortgaged real estate was held by the Sheriff of Centre County, Pennsylvania. The farm property comprising approximately 100

acres was purchased by a third-party bidder. A smaller tract owned by Huff and also subject to the Bank's mortgage, was purchased by the Bank for the sheriff's costs, and subsequently conveyed to a third-party buyer. The Centre Hall Bank has never sought to impose personal liability against Huff for any deficiency judgment resulting from the execution sale of the mortgaged property.

On the same day that the sheriff recorded the deeds of sale, Huff filed a petition seeking to set aside the sheriff's sale in the state trial court. The opinion and order issued by the state trial court below on July 28, 1994, upheld the execution sale, and denied Huff's petition and exceptions. (A. 12a-18a).

Huff appealed to the Superior Court of Pennsylvania, which affirmed the trial court in an unpublished opinion. *First National Bank of Centre Hall v. Huff*, No. 810HBG93 & No. 583HBG94 (Pa. Super. Dec. 21, 1995). (A. 1a). Huff's petition for allocatur to the Supreme Court of Pennsylvania was denied on August 27, 1996. (A. 11a).

REASONS FOR DENYING THE WRIT

I.

THE DECISION OF THE SUPERIOR COURT OF PENNSYLVANIA, AFFIRMING THE MORTGAGE FORECLOSURE AND EXECUTION PROCEEDINGS IN THE STATE TRIAL COURT, IS NOT REVIEWABLE PURSUANT TO 28 U.S.C. § 1257(a) BECAUSE THE PETITIONER FAILED TO RAISE OR PRESERVE ANY ISSUE OF FEDERAL LAW IN CONNECTION WITH THOSE PROCEEDINGS.

The discretionary jurisdiction of this Court to review final judgments or decrees rendered by state courts, is circumscribed

by 28 U.S.C. § 1257(a). Certiorari jurisdiction exists only where the highest court of a state has drawn into question a statute of the United States; where a state statute is drawn into question on the ground of its being repugnant to the Constitution or laws of the United States; or where other federal issues have been decided by the state court. None of those circumstances are present in connection with the state court proceedings below.

This Court wisely refuses to review judgments rendered by the highest court of a state unless a federal question has been both raised, and decided, in the state court below.

> It is a long-settled rule that the jurisdiction of this Court to re-examine the final judgment of a state court can arise only if the record as a whole shows either expressly or by clear implication that the federal claim was adequately presented in the state system.

Webb v. Webb, 451 U.S. 493, 496-97 (1981). *See also Yee v. City of Escondido*, 503 U.S. 519, 523-33 (1992) (in reviewing judgments of state courts pursuant to 28 U.S.C. § 1257, the Court will refuse to consider claims that were not raised or addressed below).

To the extent that the petitioner now seeks to raise constitutional arguments for the first time in this Court, he may not do so because they were never raised, or adjudicated, below. *Beck v. Washington*, 369 U.S. 541, 549-53 (1962) (because petitioner failed to argue equal protection in state court, question was not before this Court). Nor can petitioner now raise questions pertaining to the propriety of the state law execution proceedings, as being inconsistent with federal bankruptcy law, where the execution proceedings were specifically authorized by orders of the bankruptcy court, as affirmed by the district court.

Contrary to the assertions contained in Huff's petition, no federal constitutional issues were ever raised in connection with the extensive proceedings below, either in the bankruptcy court, in the district court, or in the Pennsylvania state courts. The proceedings in the state trial court and on appeal to the Superior Court of Pennsylvania, turned on the application of Pennsylvania law to factual determinations made in the state trial court. To the extent Huff attempted to argue that state law execution proceedings were inconsistent with his discharge in bankruptcy, no federal question was raised or adjudicated because those remedies were specifically authorized by two (2) separate orders issued by the bankruptcy court. Huff failed to pursue an appeal of either bankruptcy court determination to the court of appeals.

The state courts merely concluded that the discharge of personal debts issued by the bankruptcy court did not preclude execution proceedings against the mortgaged property under Pennsylvania law. The state courts recognized that the bankruptcy court had previously issued an order specifically authorizing the Centre Hall Bank to pursue its state law remedies against the mortgaged property. Both the state trial court and the Superior Court of Pennsylvania, also recognized that under Pennsylvania law, a mortgage foreclosure action is in essence an *in rem* proceeding directed against the property, rather than a collection proceeding directed against the individual debtor. These were purely state law determinations that cannot trigger the certiorari jurisdiction of this Court.

Huff's argument that the execution sale was conducted in violation of the automatic stay which was issued on his second bankruptcy filing, also fails to invoke the certiorari jurisdiction of this Court under 28 U.S.C. § 1257(a). Following Huff's filing of a second bankruptcy proceeding in April of 1994, the bankruptcy court issued an order on May 19, 1994, which provided that "the Sheriff's Sale of the Property set for May 24,

1994, shall proceed as scheduled." (S.R. 148b). Despite Huff's state court arguments to the contrary, neither the state trial court, nor the Superior Court of Pennsylvania, adjudicated any issues of federal bankruptcy law, because those issues had been decided by the bankruptcy court and the district court. When the bankruptcy court issued its order authorizing the execution sale to proceed as scheduled, the state courts were not required to determine, and did not consider, whether the execution sale in any way violated the federal bankruptcy laws.

II.

THE STATE LAW COLLECTION PROCEEDINGS AGAINST THE PETITIONER'S REAL ESTATE ARE NOT REVIEWABLE ON WRIT OF CERTIORARI, WHERE THE PETITIONER FAILED TO EXHAUST HIS APPEALS OF THE BANKRUPTCY COURT ORDERS WHICH AUTHORIZED THE COLLECTION TO PROCEED IN THE STATE COURT, AS REQUIRED BY 28 U.S.C. § 1254.

To the extent that the petitioner attempted to adjudicate bankruptcy law issues in the state court proceedings, the state courts were correct in not considering those issues on their merits. The bankruptcy court entered two separate orders which authorized The First National Bank of Centre Hall to proceed with its state court collection remedies. (S.R. 117b & 148b). Huff did appeal to the United States District Court for the Middle District of Pennsylvania, in connection with the bankruptcy court's June 18, 1993, order lifting the automatic stay to facilitate state court collection proceedings against the mortgaged property. When that appeal was denied, however, Huff never perfected an appeal to the United States Court of Appeals for the Third Circuit. The bankruptcy court's order lifting the stay to facilitate the Bank's pursuit of state court collection remedies against the mortgaged property, thus became final.

Similarly, Huff appealed the bankruptcy court's May 19, 1994, order authorizing the execution sale to proceed on May 24, 1994, to the United States District Court for the Middle District of Pennsylvania. As with the prior bankruptcy court order, Huff failed to perfect any appeal of the district court's decision affirming the bankruptcy court action. The petitioner may not now seek certiorari review of the issues decided by the bankruptcy court, because he failed to exhaust his appeals to the United States Court of Appeals for the Third Circuit, as required by 28 U.S.C. § 1254. *See, e.g., Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 147 n. 2 (1970). ("Where issues are neither raised before nor considered by the Court of Appeals, this Court will not ordinarily consider them," even though they were presented to the district court and raised by the petition for certiorari).

III.

THE ISSUES RAISED IN THE PETITION ARE MOOT BECAUSE TITLE TO THE MORTGAGED PROPERTY PASSED TO THIRD PARTIES FOLLOWING THE MAY 24, 1994, EXECUTION SALE.

On June 14, 1994, the Sheriff of Centre County, Pennsylvania, recorded deeds to the property sold at the execution sale. Since that time, the property has been owned by third-party purchasers. Although Huff has doggedly pursued this litigation, he neither sought, nor obtained, any timely supersedeas of the orders issued by either the bankruptcy court, or the state trial court, which resulted in conveyance of the mortgaged property to third-party purchasers. Because nearly three years have elapsed since Huff was dispossessed of the property, the issues raised in his petition are moot.

It has long been recognized that the federal courts lack

jurisdiction to decide moot cases because their constitutional authority extends only to actual cases or controversies for which a litigant can receive redress through a favorable judicial decision. *Iron Arrow Honor Society v. Heckler*, 464 U.S. 67 (1983). In the specific context of mortgage foreclosure sales, the federal courts have often concluded that the completion of a foreclosure sale to a third party moots the appeal from any underlying order permitting the foreclosure, because no meaningful remedy is available. *See Matter of Lloyd*, 37 F.3d 271, 273 (7th Cir. 1994) (sale of bankrupt's farmland in the absence of a stay pending appeal mooted the appeal to the extent that debtor sought return of the land); *Oakville Devel. Corp. v. FDIC*, 986 F.2d 611 (1st Cir. 1993) (foreclosure sale to a third party mooted the appeal from dissolution of injunction against sale); *In Re: March*, 988 F.2d 498, 499 (4th Cir. 1993), *cert. denied*, 510 U.S. 864 (1993) (sale at foreclosure mooted the appeal from the order permitting the foreclosure).

Here, all of the issues raised by Huff in his petition pertain to the execution sale of the mortgaged property in May of 1994. Because title to that property passed to third-party purchasers for value, nearly three years ago, there is no basis for fashioning any effective relief. Moreover, because the bankruptcy court concluded that Huff had no equity in the mortgaged property (S.R. 114b), his standing to litigate the issues raised in his petition, is suspect.

CONCLUSION

The bankruptcy court was correct in authorizing The First National Bank of Centre Hall to proceed with its collection remedies against the petitioner's real estate, pursuant to Pennsylvania law. In connection with those state court proceedings, Huff did not raise, and the Pennsylvania courts did not decide, any federal law issues. Nor did the petitioner exhaust his appeals of the bankruptcy court decisions within the federal judiciary. For these reasons, this Court lacks jurisdiction to review the claims raised by Huff. Accordingly, respondent The First National Bank of Centre Hall, now known as Northwest Savings Bank, respectfully requests that the Petition for Certiorari be denied.

Respectfully submitted,

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